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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date _____

Surname _____

Date: MAY 3 2000

Contact Person: _____

ID Number: _____

Telephone Number: _____

Employer Identification Number: _____

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were incorporated under the laws of _____ on _____. Your articles of incorporation state that you are organized exclusively for charitable, educational, religious or scientific purposes within the meaning of section 501(c)(3) of the Internal Revenue Code.

You represent that you were created to raise funds in general for a wide group of qualifying charities domiciled and registered in the USA. Unlike other charities, your intent is to stimulate charitable contributions from the general public and let the donor specify the charity that he or she may want his or her contribution to go to. You state that many online and/or street merchants already run short term, long term and continuing programs to donate a small percent of each sale to some specific charity _____ or some list of charities that the consumer selects from _____. You are oriented toward the donor and the charity the donor selects. The intent of your promotions is that the charity that the donor selects is the charity that gets the donation distributed to them. Your web site will explain in detail, that the charity selected by the donor must be included in IRS Publication 78 and in current good standing with the IRS. You will link your web site to a wide range of web search engines that will give your site exposure to Web users and potential donors. While your site has been registered, it is not yet active.

You will recruit and solicit promotional offers of merchandise from private commercial companies (providing a "hot" link to all participants) in order to provide potential donors with an array of options in return for their donations. Promotions are anticipated from companies that have a history of supporting charitable causes, especially those that support _____ fundraisers.

A typical potential donor would access your web site for a full explanation of the various options to use and how to use them. A major option would be "referral" donations from other web sites. For example, _____ offers referral commissions with a contract for the referring site and gives quarterly commissions based on referral purchases. The donor would be made aware of the deal with _____ and if the donor "clicks" on the _____ logo a drop down menu would appear and the donor would be asked to select from approximately fifty of the most widely known and recognized charities in the United States. No foreign based

charities would be eligible.

Each donor will have complete and absolute discretion in selecting the charity to which he or she wants his or her contribution to go. The only restrictions are that (1) the charity must be a domestically domiciled organization within the United States and (2) the charity must be currently recognized by the IRS as a 501(c)(3) organization within the Internal Revenue Code. This will be assured by the requirement that a donor select an organization from a supplied list of qualifying organizations or the donor can elect to use the default charity. The selection of a charity is required to donate and participate in any promotion or referral offered on your site.

Website management software used by both you and [REDACTED] would track purchases, commissions and charities selected by all donors. The donor would also be made aware of the fact that if a charity selection is not made, the "default charity" would receive the donation. Currently, you are using the [REDACTED] as the default charity. The donor would be told the name of the default charity. This example would be repeated by as many online merchants, like OfficeMax, as you could obtain. You state that all activity of this type is easily audited by automated site management software tying back to actual commissions paid by whom and to whom on a quarterly or monthly basis.

The real time credit card would come into play when a donor selects a direct contribution to one of the listed charities or another promotion option such as charitable raffles. Secure e-merchant transactions would be contracted with a reputable firm such as Wells Fargo and all transactions automated with clear and complete disclosure to all parties involved on a timely and accurate basis. The donor will receive an e-mail verification within minutes that will confirm his or her transaction in full detail with full disclosure of the transaction. Web site management and accounting software will update a complete audit trail of all credit card activity on a real-time basis.

Generally, your objective is that 90% or greater of the original donation is forwarded to the donor's selected charity for those promotions contained within referral commissions and low or little promotion costs. For raffle items you have an objective of 50% to 75% depending on the deal you make with the supplier of the raffled item and the number of raffles sold. You state that you would not enter into any "direct cost" promotion where a minimum of 50% could not be forwarded and a 25% cost on purchased promotions is considered realistic. Payments of donations will be made to eligible organizations via electronic banking techniques such as [REDACTED].

You will not be soliciting any donations specifically for any one or small group of charities, and you don't anticipate the need for written agreements with the charities authorizing you to solicit on their behalf.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations that are organized and operated exclusively for charitable or educational purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, to meet the requirements of this subdivision, it is necessary for an organization to establish that it is not operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled by such private interests.

Section 1.501(c)(3)-1(d)(2) of the regulations provides a definition of the term "charitable." It is used in its generally accepted legal sense and includes relief of the poor and distressed and promotion of social welfare through charitable activities.

Section 1.501(c)(3)-1(e)(1) of the regulations provides that an organization may meet the requirements of section 501(c)(3), although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513 of the Code.

Section 511(a) of the Code imposes a tax on the unrelated business taxable income of every organization described in sections 401(a) and 501(c).

Section 513(a) of the Code defines "unrelated trade or business" as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable, educational or other purpose or function constituting the basis for its exemption under section 501, with certain exceptions not here relevant.

Section 1.513-1(b) of the regulations provides that the term "trade or business" has the same meaning it has in section 162, and generally includes any activity carried on for the production of income from the sale of goods or performance of services. It is further provided that activities of producing or distributing goods or performing services from which a particular amount of gross income is derived do not lose identity as a trade or business merely because they are carried on within a larger complex of other endeavors which may, or may not be related to the exempt purpose of the organization.

An organization is not operated exclusively for charitable purposes, and thus will not qualify for exemption under section 501(c)(3), if it has a single non-charitable purpose that is substantial in nature. This is true regardless of the number or importance of the organization's charitable purposes. Better Business Bureau v. United States, 328 U.S. 278 (1945); Stevens Bros. Foundation, Inc. v. Commissioner, 324 F.2d 633 (8th Cir. 1963), aff'd, 39 T.C. 93 (1962), Cert. denied, 378 U.S. 969 (1964). Operating for the benefit of private parties who are not members of a charitable class constitutes such a substantial nonexempt purpose. Old Dominion Box Co., Inc. v. United States, 477 F.2d 340 (4th Cir. 1973), cert. denied, 413 U.S. 910 (1973).

Rev. Rul. 67-149, 1967-1 C.B. 133, discussed an organization that was formed for the purpose of providing financial support to several different types of organizations which were exempt under section 501(c)(3). It carried on no operations other than to receive contributions and incidental investment income and to make distributions to such organizations at periodic intervals. The organization did not accumulate its investment income. The organization was held to be exempt under section 501(c)(3).

Rev. Rul. 85-184, 1985-2 C.B. 8, provides that utility customers, who pay additional amounts on their utility bills to a utility company acting as agent for a charitable organization that assists individuals with emergency energy needs, are entitled to a charitable deduction for the additional amount in the year paid.

In the absence of written agreements with participating charities or with participating merchants, under the program as described, your activities appear to be those of a factor or middleman, bringing together buyers and sellers resulting in an incidental benefit to charity. The primary beneficiaries of your services are the merchants who make sales and the buyers who receive promotional merchandise in exchange for their purchase which serves as the basis for the charitable donation. With or without your services, the commission appears to be earmarked by the merchants for pre-selected charities. There is no indication that the commission is placed by the merchant into your account or any individual buyer's account.

for ultimate disposition by you or that particular buyer, whether to charity or otherwise. The commission is already earmarked for charity but in exchange for your procuring the customer, you are permitted to "make a charitable donation" in the name of the buyer.

Since neither you nor the customer has a choice over the disposition of the commission, a question may arise as to whether or not a voluntary contribution for which a charitable deduction could be taken under section 170 of the Code has been made. See Rev. Rul. 85-184.

The primary objective of a customer in these arrangements is to make a purchase from a participating merchant based on loyalty to the merchant or for the sake of receiving advertised promotional merchandise. In order for a contribution to be made to a selected charity, you must first attract a customer to your web site. You must then direct the customer to the participating merchant. If the customer makes a purchase, a commission is paid which will subsequently be transferred to the selected charity. The amount of the commission and to whom it was paid is recorded by both you and the merchant.

You can be distinguished from the organization discussed in Rev. Rul. 67-149 in that you are not providing the financial support to the charitable organizations, and you are engaging primarily in other activities (the recruiting and solicitation of promotional merchandise from private commercial companies, and the bringing together of buyers and sellers) unrelated to an exempt purpose.

Unlike the organization discussed in Rev. Rul. 85-184, which was held to be an agent of the charitable organization, your program involves your directing customers to the merchants in exchange for a commission, a portion of which is then donated to one of the merchant's pre-selected charities in the buyer's name. The buyer serves only an administrative function in the donation process by nominally selecting the recipient of the commission. You are in effect serving as agent of both the buyers and the sellers in facilitating the business arrangement between the two. This is a non-charitable purpose that is substantial in nature and would preclude exemption under section 501(c)(3) of the Code. See Better Business Bureau v. United States and Old Dominion Box Co., Inc. v. United States, both cited above.

Although some funds may ultimately be made available to charity as a result of your activities, the potential benefits to charity are substantially outweighed by the predominantly private purposes being served by facilitating the interaction between customers and merchants. The fact that potential gifts to charity are contemplated in the arrangements do not convert the arrangements into charitable activities. See section 1.513-1(b) of the regulations.

Because we believe that your operations will result in substantial private benefit to the participating merchants, and; because your primary activity, the bringing together of buyers and sellers, is an activity unrelated to any exempt purpose; and because you have not established that you are an authorized agent of any exempt organization for the purpose of collecting donations or contributions on their behalf; and, because you have not otherwise established that you meet the requirements for exemption under section 501(c)(3), we have concluded that you are not operated exclusively for charitable, educational or religious purposes and we therefore cannot recognize you as an organization exempt under that section.

You must file federal income tax returns. Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in

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Date [REDACTED]

Surname [REDACTED]

Signature _____

this office after your statement is submitted. You must request the conference. If you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
Attn: T.E.O.RA:T:3 JC Rm. 6137
1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) Robert C Harper, Jr.

Robert C. Harper, Jr.
Manager, Exempt Organizations
Technical Group 3

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
	T.E.O.RA:T:3	T.E.O.RA:T:3					
Surname	[REDACTED]						
Date	[REDACTED]						